

The opinion in support of the decision being entered today is
not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PHYLLIS LEITHEM,
CHARLES A. KREMERS,
W. PAUL HARRELL, STEPHEN LEWIS,
KARL D. SEARS, QYAN HE and
PETER R. ABITZ

Appeal 2005-2682
Application 09/334,125
Technology Center 3700

Decided: September 14, 2007

Before EDWARD C. KIMLIN, THOMAS A. WALTZ, and
CATHERINE Q. TIMM, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of our decision of October 21, 2005,
wherein we affirmed the Examiner's rejection of claims 61 and 62 under
35 U.S.C. § 103(a) over the combined teachings of Pociluyko and Novak.

Upon careful review of the arguments presented by Appellants in their Request, we hereby modify our decision to the extent that we will not sustain the Examiner's § 103 rejection.

We agree with Appellants that the Examiner has not established that Novak's method of modifying cellulose pulp for making paper meets the requirement for "fluffing" the pulp recited in the appealed claims. Novak expressly teaches that "[t]he result in product was a very soft, open, and felt-like paper" (Answer 2, col. 1, ll. 15-16), and we agree with Appellants that the Examiner has not made out the case that one of ordinary skill in the art would have fluffed the pulp layer of Pociluyko by the treatment method of Novak that produces felt-like paper.

Also, a basis for our decision was our misunderstanding that it was admittedly known in the art to treat wood fiber pulp with a base at room temperature. However, in light of Appellants' argument that the base treatment at room temperature is an added "new feature not suggested by the cited prior art" (Request 4, 3rd para.), we have reviewed the cited prior art as well as the background art of Appellants' Specification. In so doing, we find no evidence that the claimed step of treating the pulp with a base at a temperature within the claimed range was conventional in the art of making an absorbent composite useful for personal hygiene articles.

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Accordingly, based on the foregoing, we have modified our decision of October 21, 2005 to the extent that the Examiner's rejection of the appealed claims under 35 U.S.C. 103(a) is reversed.

GRANTED

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